

Claim Number: 587-27-9343 DI

E71 08S1074D15664

1-10-68

We explain how we figured the monthly payment amounts shown below on the last page(s) of this letter. The explanation shows how your income, other than any SSI payments, affects your SSI payment. It also shows how we decided how much of your income affects your payment amount. We include explanations only for months where payment amounts change.

- The amount due you beginning January 2009 will be \$50.00.
- The amount due you is being raised because the law provides for an increase in Supplemental Security Income payments in January 2009 if there was an increase in the cost-of-living during the past year.

- you were disabled before age 22, and
- you are unmarried, and
- at least one of your parents worked long enough under the Social Security program and is entitled to retirement or disability benefits or is deceased.

SSA-18151

11/30/2008

If you think you meet the above rules, please contact any Social Security office to file an application for childhood disability benefits.

You Can Review The Information in Your Case

The decisions in this letter are based on the law. You have a right to review and get copies of the information in our records that we used to make the decisions explained in this letter. You also have a right to review and copy the laws, regulations and policy statements used in deciding your case. To do so, please contact us. Our telephone number and address are shown under the heading "If You Have Any Questions."

Things To Remember

- Your payments may change if your circumstances change. Therefore, you are required to report any change in your situation that may affect your Supplemental Security Income payment. For example, you should tell us if you move, if anyone else moves from or into your household, if your marital status changes, if income or resources for you or members of your household change, if your medical condition improves or if you go to work.
- You may use this letter when you need proof of your SSI payment amount for other assistance programs such as food stamps, rent subsidies, energy assistance, medical assistance, bank loans, or for other purposes. However, if you get another letter saying your SSI payment is changing again, use that letter instead.
- We may share information about you with other government agencies that pay benefits. Agencies use such information to see if a person qualifies for benefits. We sometimes use computer matching to share information and compare our records with those of other Federal, State, or local government agencies. The law allows us to use computer matching even if you do not agree.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How To Appeal

There are two ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

- Case Review. You have a right to review the facts in your file. You can give us more facts to add to your file. Then we'll decide your case again. You won't meet with the person who decides your case. This is the only kind of appeal you can have to appeal a medical decision.
- Informal Conference. You'll meet with the person who decides your case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain your case.

If You Want Help With Your Appeal

You can have a friend, representative or someone else help you. There are groups that can help you find a representative or give you free legal services if you qualify. There are also representatives who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

If You Have Any Questions

For general information about SSI, visit our website at www.socialsecurity.gov on the Internet. You will find the law and regulations about SSI eligibility and SSI payment amounts at www.socialsecurity.gov/SSIrules/.

For general questions about SSI or specific questions about your case, please call us toll-free at 1-800-772-1213, or call your local Social Security office at 228-388-1432. Our lines are busiest early in the week and early in the month, so if your business can wait, it's best to call at other times. We can answer most questions over the phone. If you need assistance for any reason, you can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
946 TOMMY MUNRO DRIVE
BILOXI MS 39532

11/30/2008

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.



Michael J. Astrue
Commissioner
of Social Security



HOW WE FIGURED YOUR PAYMENT FOR January 2009 ON

Your Payment Amount

The most SSI money the law allows us to pay	\$674.00
Minus (-) "Total income we count" (see below)	<u>-624.00</u>
Total Monthly SSI Payment for January 2009 on	\$ 50.00

Your Income Other Than Your SSI

Income you receive in November 2008 on affects your payment for January 2009 on

Department of Veterans Affairs assistance payments	<u>\$624.00</u>
Total income we count	\$624.00

ESTABLISHED 1898

THE PEOPLES BANK

MEMBER FDIC

"Where PEOPLE come first"

P.O. DRAWER 529 BILOXI, MISSISSIPPI 39533-0529
(228) 435-5511 • (228) 864-2252 • (800) USE-MINT (873-6468)
FAX (228) 435-8418

October 8, 2007

Ms. Cathy Toole
250 Bohn Street
Biloxi, Ms 39530

Dear Ms. Toole:

This past weekend when I checked my phone messages at home I noticed that you had called me regarding a Veterans Administration direct deposit that was supposed to come to your account at The Peoples Bank over the last several years.

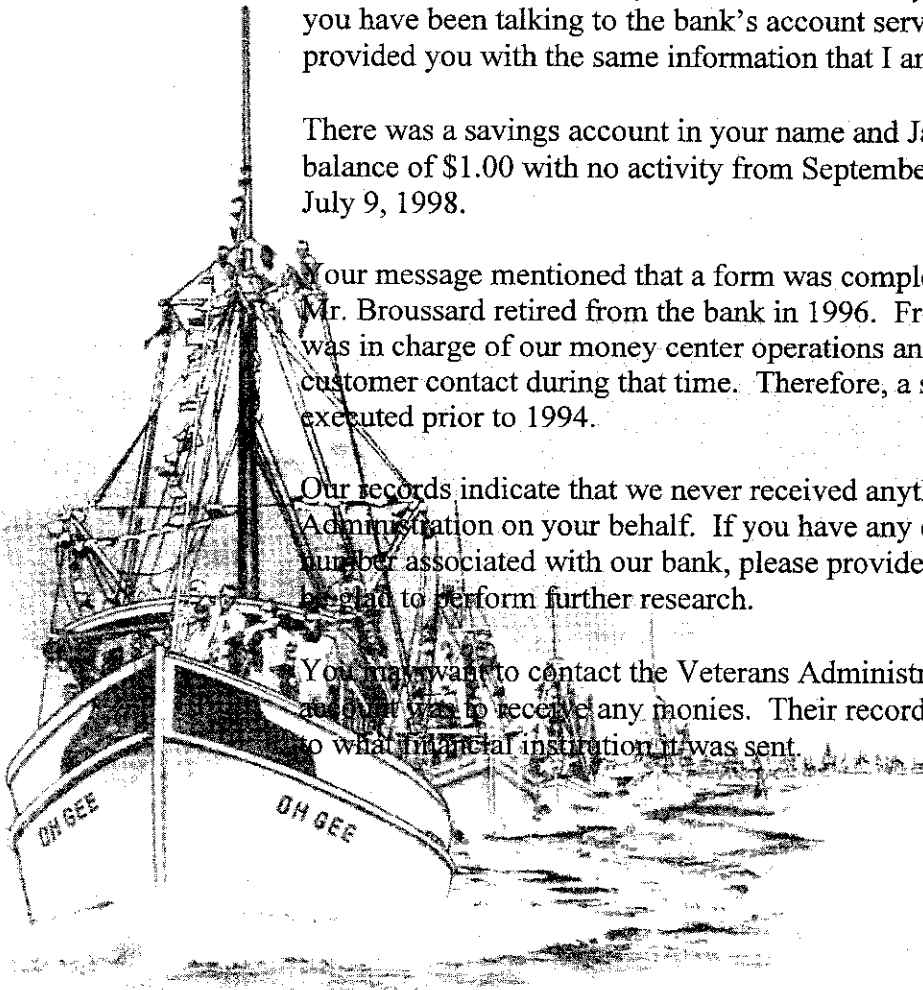
When I came into work this morning, I checked with the operations department personnel to inquire if they had information on your account. I was advised that you have been talking to the bank's account service representative, who had provided you with the same information that I am providing you.

There was a savings account in your name and James Toole's name that had a balance of \$1.00 with no activity from September 30, 1994 until it was closed on July 9, 1998.

Your message mentioned that a form was completed by Mr. Ronnie Broussard. Mr. Broussard retired from the bank in 1996. From 1994 to 1996, Mr. Broussard was in charge of our money center operations and would not have had any customer contact during that time. Therefore, a sign-up form would have been executed prior to 1994.

Our records indicate that we never received anything from the Veterans Administration on your behalf. If you have any other checking or savings account number associated with our bank, please provide that information to us and we will be glad to perform further research.

You may want to contact the Veterans Administration and inquire how your account was to receive any monies. Their records would show what was sent and to what financial institution it was sent.



October 8, 2007

Ms. Cathy Toole
Page Two

At this time, we have exhausted all research capability with the information provided from you.

Sincerely yours,



Chevis C. Swetman
President and CEO

CCS/jtb

Enclosures: (3)

Date 3/31/98 Page 1
Account Number 1295435
Tax ID 424-42-7647
Enclosures

JAMES L TOOLE
OR CATHY TOOLE
P O BOX 782
BILOXI MS 39533-0782

***** SAVINGS ACCOUNT *****

HUNTING FOR THE BEST C D RATES?
PICK AN EGG OUT OF THE PEOPLES BANK'S BASKET AND SEE WHAT
INTERESTING ADDITION IS REVEALED!! OFFER ENDS 4/13/98

STATEMENT SAVINGS		Number of Enclosures	0
Account Number	1295435	Statement Dates	9/30/94 thru 3/31/98
Previous Balance	1.00	Days in the statement period	279
Deposits/Credits	.00	Average Ledger	.16
Checks/Debits	.00	Average Collected	.32
Service Charge	.00		
Interest Paid	.00		
Ending Balance	1.00		

Date 6/30/98 Page 1
 Account Number 1295435
 Tax ID 424-42-7647
 Enclosures

JAMES L TOOLE
 OR CATHY TOOLE
 RET MAIL 041698
 XXXXXXXXXXXXXXXXXXXX

***** SAVINGS ACCOUNT *****

MEETING THE YEAR 2000 CHALLENGE

The millennium is less than two years away;
 We're preparing for that big day. Are you set for Y2K?

STATEMENT SAVINGS		Number of Enclosures	0
Account Number	1295435	Statement Dates	4/01/98 thru 6/30/98
Previous Balance	1.00	Days in the statement period	91
Deposits/Credits	.00	Average Ledger	1.00
Checks/Debits	.00	Average Collected	1.00
Service Charge	.00	Interest Earned	.01
Interest Paid	.01	Annual Percentage Yield Earned	4.07%
Ending Balance	1.01	1998 Interest Paid	.01

6/30 Interest Deposit .01 CR 1.01

CR Internal Transfer Credit

Date 9/30/98 Page 1
 Account Number 1295435
 Tax ID 424-42-7647
 Enclosures

JAMES L TOOLE
 OR CATHY TOOLE
 RET MAIL 041698
 XXXXXXXXXXXXXXXXXXXX

***** SAVINGS ACCOUNT *****

FINAL PAYMENT FOR YOUR CHRISTMAS CLUB
 WILL BE OCTOBER 16, 1998
 YOU MAY PAY AT ANY OF OUR 12 CONVENIENT LOCATIONS

STATEMENT SAVINGS		Number of Enclosures	0
Account Number	1295435	Statement Dates 7/01/98 thru	9/30/98
Previous Balance	1.01	Days in the statement period	92
Deposits/Credits	.00	Average Ledger	.08
1 Checks/Debits	1.01	Average Collected	.08
Service Charge	.00		
Interest Paid	.00		
Ending Balance	.00	1998 Interest Paid	.01

7/09	CLOSING ENTRY	1.01-	.00
------	---------------	-------	-----

UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Cathy Toole, Appellant,

vs.

R. JAMES NICHOLSON,
Secretary of Veterans Affairs, Appellee.

)
)
)
)
)
)

U.S.C.A.V.C. # 07-2675

DECLARATION OF NET WORTH

Appellant, Cathy Toole, hereby declares and states:

1. I am the appellant named in this appeal. This declaration is based upon my personal knowledge.
2. At the time this civil action was filed, my personal net worth did not exceed \$2,000,000 (two million dollars); nor did I own any unincorporated business, partnership, corporation, association, unit of local government, or organization, the net worth of which exceeded \$7,000,000 (seven million dollars) and which had more than 500 employees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

X Cathy Toole
Veteran

Jan 09, 2008
Date

APPENDIX 10-C 18461486

10-27

Standard Form 292
Rev. February 1973
Supersedes April, 1963
Treasury Dept. Circ. No. 21
232-102

(Note.—The grantor's given name, additional initials, if any, and surname should be used in the execution of the power of attorney.)

POWER OF ATTORNEY BY INDIVIDUAL FOR THE COLLECTION OF A SPECIFIED
CHECK DRAWN ON THE UNITED STATES TREASURY

Know all Men by these Presents:

That the undersigned, _____, of _____,
(Post-office address), does hereby appoint _____,
(Post-office address), of _____,
(Post-office address)

as attorney to receive, endorse, and collect check No. _____, dated _____, 19____,
for _____ dollars
drawn on the United States Treasury, by: _____

Symbol No. _____, in favor of _____, and to
give full discharge for same; hereby ratifying and confirming all that said attorney shall lawfully do or cause
to be done by virtue hereof.

Witness the signature and seal of the undersigned, this Jan 9 day of
2008

Cathy Toole
(Signature)
250 Bohn St
(Address)

Osai R. Helton
(Signature)
19394 North Shaw Rd
(Address)

X Cathy Toole [SEAL]

Two witnesses.

*Personally appeared before me the above-named _____
known or proved to me to be the same person who executed the foregoing instrument, and acknowledged to
me that he executed the same as his free act and deed; and I hereby certify that the said power of attorney
was read and fully explained to the said grantor at the time of acknowledgment.

Witness my signature, official designation, and seal.

[IMPRESS SEAL HERE]

Cathy Toole
(Signature of attesting officer)

(Official designation)

Dated at 9, this _____ day of _____, 19____.

My commission expires _____, 19____.

IMPORTANT.—Do not execute this instrument without first reading the instructions on the reverse side hereof. Exact
compliance with these instructions will avoid complications.

*SEE INSTRUCTIONS ON REVERSE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CATHY TOOLE

§
§
§
§
§

PLAINTIFF

v.

Civil Action No. 1:06CV716LG-JMR

ALLEN WEINSTEIN, ET AL.

DEFENDANTS

**ORDER DISMISSING PLAINTIFF'S COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION**

This cause comes before the Court *sua sponte*, after review of the pleadings on file in the above captioned cause. Specifically, the Court has reviewed the Plaintiff's response to the Court's show cause order and finds that the above captioned cause should be dismissed pursuant to FED. R. CIV. P. 12(b)(1).

District courts have jurisdiction of all civil actions "arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. However, the grounds for this Court's jurisdiction are not unlimited, a complaint must seek a *remedy* expressly granted by a federal law or it must require the construction of a federal statute or the application of federal legal principles for its disposition. *Frank v. Bear Stearns & Co.*, 128 F.3d 919, 922 (5th Cir. 1997). If this "court lacks the statutory or constitutional power to adjudicate the case," *The John Corp. v. City of Houston*, 214 F.3d 573, 576 (5th Cir. 2000) (citations omitted), the case should be dismissed for lack of jurisdiction.

The pleadings establish that the Plaintiff, Cathy Toole, is the widow of veteran James Luther Toole. Construed liberally, the gravamen of Plaintiff's complaint is that she has wrongfully been denied benefits by the United States Veteran's Administration. The complaint does not attack the constitutionality of an Act of Congress, rather it asserts that Plaintiff is rightfully entitled to certain veterans' benefits. 38 U. S.C. § 511(a) regulates the Authorities and Duties of the Secretary concerning Veterans' Benefits. It provides in part:

(a) The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

38 U.S.C.A. § 511.

In *Zuspann v. Brown*, 60 F.3d 1156 (5th Cir. 1995), the Fifth Circuit held that under 38 U.S.C. §§ 511 and 7251, [Veterans' Judicial Review Act], the district courts have no jurisdiction to review a denial of benefits. In support of its decision, the Court reasoned that:

In 1988, Congress passed the Veterans' Judicial Review Act ("VJRA"), which clearly announced the intent of Congress to preclude review of benefits determinations in federal district courts. The VJRA also created an exclusive review procedure by which veterans may resolve their disagreements with the Department of Veterans Affairs. The VJRA allows veterans to appeal benefits determinations to the Board of Veterans' Appeals. Jurisdiction to review the Board's decisions is conferred exclusively on the Court of Veterans Appeals. The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction to review the decisions of the Court of Veterans Appeals. Congress expressly gave the Federal Circuit Court of Appeals "exclusive jurisdiction" to "interpret constitutional and statutory provisions, to the extent presented and necessary to a decision".

Zuspann, 60 F.3d at 1158 -59.

It is the opinion of the Court that Plaintiff is unable to demonstrate the requisite subject matter jurisdiction necessary for this Court to consider her claims. Accordingly,

IT IS ORDERED AND ADJUDGED that Plaintiff's complaint should be and is hereby **DISMISSED** for lack of subject matter jurisdiction pursuant to FED. R. CIV. P. 12(b)(1).

SO ORDERED AND ADJUDGED this the 6th day of December, 2006.

st. Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

NOTICE TO FILE BRIEF

DOCKET No: 07-2675
CATHY L. TOOLE, APPELLANT,

DATE: 7/18/08

v.

JAMES B. PEAKE, M.D.,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

TO THE APPELLANT:

VA counsel has sent the Record on Appeal to you and to the Court.

Your brief is due **within 60 days** after the date of this notice. If you are unrepresented, you may use the informal brief form attached to this notice.

NORMAN Y. HERRING
Clerk of the Court

By: Robyn Willis *RW*
Deputy Clerk

☒ Attachment (only to unrepresented appellant)

Copies to:

Cathy L. Toole

VA General Counsel (027)

COPY




National Personnel Records Center

9700 Page Avenue St. Louis, Missouri 63132-5100

OCT 27 2000

Cathy Toole
250 Bohn St.
Biloxi, MS 39530

Dear Mrs. Toole:

This is in reference to your recent letter and our telephone conversation of October 24, 2000. We have carefully reviewed the contents of the "reconstructed" military record of your husband, James L. Toole, including all of the correspondence filed in it.

After completion of this review, I can confirm that Mr. Toole's original military record was destroyed in the July 12, 1973, fire at this Center. Approximately 18 million records were destroyed, and there is no doubt that your husband's was one of these.

Through the use of alternate record sources, we have been able to provide some basic military information to you at your request. We have also provided some medical records to a physician designated by you. The medical records were secured by us from the Department of Veterans Affairs (VA). We have, therefore, provided all available information and records we hold relating to Mr. Toole's military service to either you or your designated physician.

Our review also indicated that the benefit that your husband received from the VA was a non-service connected Pension, a need based program which is based on medical conditions which are not service connected but render the veteran permanently and totally disabled. The benefit which you may now be receiving from the VA would be a widow's Pension benefit, which is also need based, and is not based on a service connected death. However, any questions that you may have about entitlement to VA benefits must be addressed to the VA.

This response to you is as complete and conclusive as we can provide. We have no other records or information available to us in reference to your requests.

Sincerely,

R. L. HINDMAN
Director



National Personnel Records Center

Military Personnel Records, 9700 Page Avenue St. Louis, Missouri 63132-5100

June 20, 2003

Ms. Cathy Toole
250 Bohn St.
Biloxi, MS 39530

RE: Veteran's Name: TOOLE, JAMES
SSN/SN: 424427647
Request Number: 1-32548101

Dear Ms. Toole:

Thank you for contacting the National Personnel Records Center. The Army personnel record was loaned to the Army Review Board and has not yet been returned to the National Personnel Records Center. We are forwarding your inquiry to the office shown below because access to military records is currently under their jurisdiction. We regret that we cannot be of direct assistance; however, you may expect a response from the address shown below.

Army Board for the Correction of Military Records
1941 Jefferson Davis highway, 2nd Floor
Arlington, VA 22202-4508

If you have questions or comments regarding this response, you may contact us at 314-801-0800 or by mail at the address shown in the letterhead above. If you contact us, please reference the Request Number listed above. If you are a veteran, or a deceased veteran's next of kin, please consider submitting your future requests online by visiting us at <http://vetrecs.archives.gov>.

Sincerely,

CHERYL A. MOE
Archives Technician (5D)



National Personnel Records Center

Military Personnel Records, 9700 Page Avenue St. Louis, Missouri 63132-5100

CATHY TOOLE
250 BOHN STREET
BILOXI MS 39530

RE: Veteran's Name: TOOLE JAMES
SSN/SN: NG 24 606 290
Request Number: 1-188034229

Dear Mrs. Toole:

Thank you for contacting the National Personnel Records Center. The record needed to answer your inquiry is not in our files. If the record were here on July 12, 1973, it would have been in the area that suffered the most damage in the fire on that date and may have been destroyed. The fire destroyed the major portion of records of Army military personnel for the period 1912 through 1959, and records of Air Force personnel with surnames Hubbard through Z for the period 1947 through 1963.

This Center has responded to numerous inquiries on your behalf. We have provided you everything we have been able to reconstruct. This Center has no new information to provide to you.

If you have questions or comments regarding this response, you may contact us at 314-801-0800 or by mail at the address shown in the letterhead above. If you contact us, please reference the Request Number listed above. If you are a veteran, or a deceased veteran's next of kin, please consider submitting your future requests online by visiting us at <http://vetrecs.archives.gov>.

Sincerely,

CHERYL A. MOE
Archives Technician (5D)



**DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
200 STOVALL STREET
ALEXANDRIA VA 22332-0400**

August 27, 2008

Secretary of the General Staff

Cathy Toole
250 Bohn Street
Biloxi, MS 39530

Dear Cathy Toole:

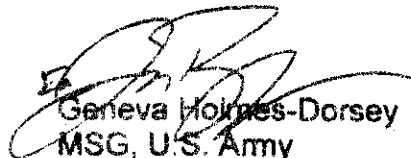
This is in response to your letter on July 30, 2008, concerning your husband's military records.

We honor the opportunity to provide assistance to survivors of veterans who have honorably served in our Nation's armed forces. However, this action is not in the purview of the Human Resources Command. The National Personnel Records Center (NPRC) is the repository of Military Personnel Files of Army Veterans where your records are located. You may write to their office at:

National Personnel Records Center
9700 Page Avenue
St. Louis, MO 63132-5100
Phone: 314-801-0800

Thank you for expressing your concerns and issues. We appreciate your support of our veterans, and the men and women serving in America's Army today.

Sincerely,


Geneva Holmes-Dorsey
MSG, U.S. Army
Secretary General Staff

Standard Form 502
Rev. August 1954
Promulgated
By Bureau of the Budget
Circular A-32

CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION 1-16-57	DATE OF DISCHARGE 2-5-57	NUMBER OF DAYS HOSPITALIZED 20	

FINAL SUMMARY**RO ADJUDICATION DIV.**

HISTORY: Patient admitted to the VA Hospital, Montgomery, Alabama, 1/16/57, with a history of first noticing a pilonidal sinus in 1954, at which time he had it incised and drained. He had no further difficulty until three weeks prior to admission, when it began to drain, again. He has had multiple inclusion cysts of the face and neck, which have appeared since discharge from service. Past history and system review were noncontributory.

PHYSICAL EXAMINATION: Revealed a 20 year old white male, well developed, well nourished, in no acute distress. BP 120/80. Pertinent physical findings revealed multiple inclusion cysts of the face and neck. Examination of the sacro-coccygeal region revealed multiple sinus openings over this area.

LABORATORY: Admission urinalysis was within normal limits. Hemogram within normal limits. VDRL negative. Chest X-ray negative.

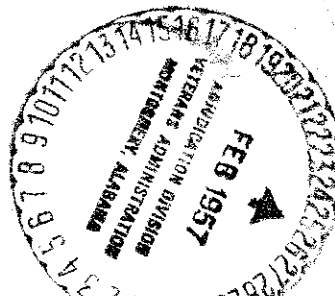
HOSPITAL COURSE: At the time of admission the patient was placed on hot sitz baths, and achromycin, 250 mgms. every six hours. Following this, the patient's inflammatory reaction around the pilonidal sinus subsiding, he was taken to the operating room on 1-21-57, at which time excision of the pilonidal sinus was, with primary closure, carried out. Post-operative course uneventful. He was again taken to the operating room on 2-1-57 and at this time inclusion cysts below the left eye and along the left mandible at the angle, was excised. Post-operative course was uneventful and the patient was discharged MHB on 2-5-57.

DIAGNOSES: Pilonidal sinus. Treated. Operated.
Inclusion cysts of the face and neck. Treated. Operated.

RECOMMENDATIONS: Patient to avoid long periods of sitting for the next two weeks.

APPROVED:

F. S. Springall
F. S. SPRINGALL, MD
Acting Chief, Surgical Service
BMC:mfh

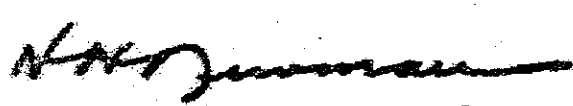


(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN BRUCE M. CULVAHOUSE, M.D.	DATE 2-13-57	IDENTIFICATION NO. C 18-481-486	ORGANIZATION VAH
PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle; grade; date; hospital or medical facility)		REGISTER NO. 50 651	WARD NO. B-1

TOOLE, James L.
VAH, Montgomery 10,

NARRATIVE SUMMARY
Standard Form 502

REQUEST FOR MEDICAL/DENTAL RECORDS		DATE 8 OCT 1954
1. TO: Commanding Officer Co F 1st Inf Tng Bgt CD RTC Cp Gordon, Georgia		2. FROM: <input type="checkbox"/> The Adjutant General Washington 25, D. C. ATTN: AGPI. <input checked="" type="checkbox"/> CO, Military Personnel Records Center, TAGO 4700 Goodfellow Boulevard St. Louis 20, Missouri ATTN: AGRC-F
3. PATIENT (Last Name - First Name - Middle Initial) TOOLE, James L.		4. SERVICE NUMBER (S) MS 34 606 280
		5. VIA CLAIM NUMBER C 12 451 485
6. ORGANIZATION AND PLACE OF TREATMENT Dispensary	7. DATES OF TREATMENT (Incl) May 54	8. DISEASE OR INJURY Right ear
9. RECORDS REQUESTED <input type="checkbox"/> CLINICAL <input checked="" type="checkbox"/> OUT-PATIENT <input type="checkbox"/> DENTAL REGISTER <input type="checkbox"/> X-RAY <input type="checkbox"/> MEDICAL REPORT CARDS, EMERGENCY TAGS, FIELD MEDICAL CARDS <input type="checkbox"/> OTHERS (See remarks) <input type="checkbox"/> ALL AVAILABLE RECORDS (Search will include all hospital, dispensary, clinics, or other medical facilities)		10. REMARKS
NOTE: Records described above should be forwarded, if available, or negative reply furnished direct to the address shown under item 12 below.		11. SIGNATURE OK BY THE ORDER OF THE SECRETARY OF THE ARMY  Adjutant General
FIRST INDORSEMENT (See instructions on reverse side)		
12. TO: Veterans Administration Regional Office 400 Lee Street Montgomery 4, Alabama		13. ACTION TAKEN <input type="checkbox"/> AVAILABLE RECORDS INCLOSED <input type="checkbox"/> NO RECORDS ON FILE
14. INCLOSURES (Number of) ____ CLINICAL ____ OUT-PATIENT ____ DENTAL REGISTER ____ X-RAY ____ MEDICAL REPORT CARDS, EMERGENCY MEDICAL TAGS, FIELD MEDICAL CARDS ____ OTHER		15. REMARKS
DATE		16. SIGNATURE

Amendments to the Constitution

ARTICLES IN ADDITION TO, AND AMENDMENTS OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

Article [I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article [II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article [III.]

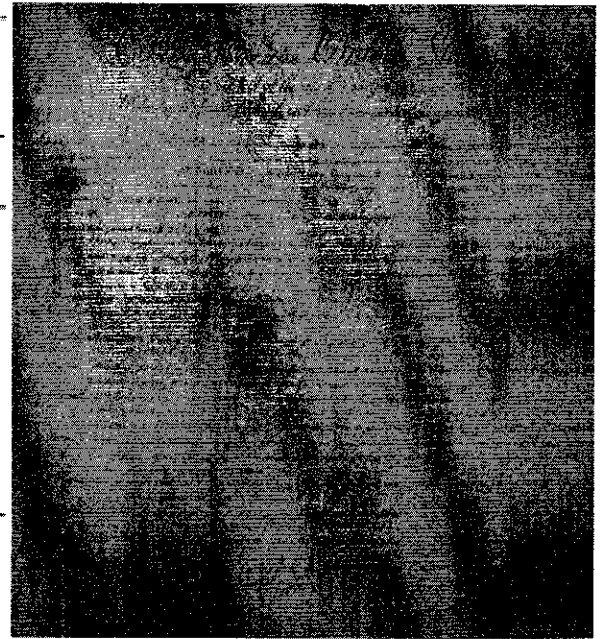
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



Vet. App. No. 07-2675

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

CATHY L. TOOLE,
Appellant,

v.

JAMES B. PEAKE, M.D.,
Secretary of Veterans Affairs,
Appellee.

**ON APPEAL FROM THE
BOARD OF VETERANS' APPEALS**

**BRIEF OF THE APPELLEE
SECRETARY OF VETERANS AFFAIRS**

JOHN H. THOMPSON
Acting General Counsel

R. RANDALL CAMPBELL
Assistant General Counsel

DAVID L. QUINN
Deputy Assistant General Counsel

RICHARD A. DALEY
Senior Appellate Attorney
U.S. Department of Veterans Affairs
Office of the General Counsel (027G)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 639-4851/4800

Attorneys for the Appellee

TABLE OF CONTENTS

I.	ISSUES PRESENTED	1
II.	STATEMENT OF THE CASE	1
A.	JURISDICTIONAL STATEMENT	1
B.	NATURE OF THE CASE	2
C.	STATEMENT OF FACTS	2
III.	SUMMARY OF THE ARGUMENT	5
IV.	ARGUMENT	5
A.	THERE IS A PLAUSIBLE BASIS IN THE RECORD TO SUPPORT THE BOARD'S DECISION, AND IT IS NOT CLEARLY ERRONEOUS.	5
B.	APPELLANT'S CONTENTIONS	8
V.	CONCLUSION	9

TABLE OF AUTHORITIES

FEDERAL CASES

Butts v. Brown, 5 Vet. App. 532, 535-37 (1993) (en banc).....	6
Darby v. Brown, 10 Vet.App. 243, 245 (1997).....	5, 6
Espiritu v. Derwinski, 2 Vet.App. 492, 494-95 (1992).....	8
Harder v. Brown, 5 Vet.App. 183, 189 (1993)	6
Kane v. Principi, 17 Vet. App. 97, 100 (2003)	5
Kowalski v. Nicholson, 19 Vet. App. 171, 179 (2005)	6
Newhouse v. Nicholson, 497 F.3d 1298, 1302 (Fed. Cir. 2007)	8
Owens v. Brown, 7 Vet.App. 429, 433 (1995)	8
Roberson v. Principi, 17 Vet.App. 135, 146 (2003)	6
Rodriguez v. Peake, 511 F.3d 1147, 1148 (Fed. Cir. 2008).....	7
Russo v. Brown, 9 Vet. App. 46, 50 (1996)	6
Sabonis v. Brown, 6 Vet.App. 426, 430 (1994)	7
Soyini v. Derwinski, 1 Vet.App. 540, 546 (1991)	7
Valiao v. Principi, 17 Vet.App. 229, 232 (2003).....	8
Wood v. Derwinski, 1 Vet.App. 190, 193 (1991)	8
Wray v. Brown, 7 Vet. App. 488, 492 (1995).....	6

FEDERAL STATUTES

38 U.S.C. § 1310	2, 5
38 U.S.C. § 1318	1, 5, 7
38 U.S.C. § 3500	7
38 U.S.C. § 7252	1
38 U.S.C. § 7261	6
Pub. L. No. 106-475	3

FEDERAL REGULATIONS

38 C.F.R. § 3.22	7
38 C.F.R. § 3.312	5, 6
38 C.F.R. § 3.807	7

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

CATHY L. TOOLE,

Appellant

v.

JAMES B. PEAKE, M.D.,
Secretary of Veterans Affairs,
Appellee.

)
)
)
) Vet. App. No. 07-2675
)
)
)

ON APPEAL FROM THE
BOARD OF VETERANS' APPEALS

BRIEF OF THE APPELLEE
SECRETARY OF VETERANS AFFAIRS

I. ISSUES PRESENTED

1. Whether the Court should affirm the July 23, 2007, Board of Veterans' Appeals (BVA or Board) denial of Appellant's claim of entitlement to service connection for her veteran husband's cause of death (COD).
2. Whether the Court should affirm the denial on the same date of entitlement to Dependency and Indemnity Compensation (DIC) under 38 U.S.C. § 1318.
3. Whether the Court should further affirm the denial of the same date of entitlement to Dependent's Educational Assistance (DEA).

II. STATEMENT OF THE CASE

A. JURISDICTIONAL STATEMENT

The Court's jurisdiction in this matter is predicated upon 38 U.S.C. § 7252.

B. NATURE OF THE CASE

Cathy L. Toole (Appellant) appeals the Board's July 23, 2007, decision in which it determined that she was not entitled to DIC benefits (under either 38 U.S.C. § 1310 or § 1318) or DEA benefits. (See Record (R.) at 4, 12). Appellant appears to complain that the Board erred in weighing the evidence in general in terms of the amount of time the veteran served, and specifically in terms of determining the cause of his death. Appellant's arguments are without merit.

C. STATEMENT OF FACTS

The veteran served on active duty in the U.S. Army from February 11 to June 21, 1954 (R. at 16), and active duty for training for fifteen day in 1958.¹ (R. at 38). His service medical records (SMRs) do not reflect any complaints or history of, or treatment for, any heart disease, diabetes, or pulmonary disease. (R. at 18-19, 23). The SMRs do reflect a history of being struck over the left ear with a rifle in basic training, and treatment for a right-ear discharge. (R. at 19, 23). His claims file was destroyed by fire in 1973. In February 1997, the veteran was noted by VA to have been a 60+ pack-year smoker, and status post alcohol abuse. (R. at 33). The veteran died on December 6, 1997. (R. at 42, 44, 50). The immediate cause of death was cardiac arrest, due to cardiomyopathy and myocardial infarction. (R. at 50). Other conditions contributing to the veteran's death, but not resulting in the cardiac arrest, were diabetes mellitus and chronic obstructive pulmonary disease. (R. at 50).

Appellant filed her application for benefits in January 1998 (R. at 44-48), which the Regional Office (RO) denied in February 1999. (R. at 104-05). In pursuit of her appeal, in April 2000, Appellant sought the veteran's claims file from the VA medical center (VAMC), but they declined, explaining that they could

¹ Appellant did not marry the veteran until approximately twenty years after his active-duty service. (See R. at 396).

fulfill such a request only if it came from either the RO or the National Personnel Records Center (NPRC). (R. at 135). The Board denied Appellant's appeal in a September 2000 decision in which it weighed the evidence regarding the nature and extent of the veteran's service, lifetime disabilities, and COD. (R. at 137-50).

Appellant then undertook further efforts to obtain records to corroborate her belief that the veteran served more than was reflected in his DD 214 were met with initial resistance. (See R. at 152). In response, the Board's Freedom of Information Act (FOIA) Officer informed Appellant in August 2000 that the RO had, in fact, contacted the Federal Archives Records Center (FARC) East Point and Pittsfield facilities, and neither had any records regarding the veteran. (R. at 152-53, 155-60). The FOIA Officer noted that all records obtained regarding the veteran were already contained in the claims file, and that a copy thereof had already been sent to Appellant in February 2000. (R. at 152-53). In October of that year, the NPRC informed Appellant that it had reconstructed the veteran's claims file, and that she was thus already in possession of any and all evidence regarding the veteran's service. (R. at 162).

In March 2001, however, the Secretary filed a unilateral motion for vacatur and remand for compliance with the then-newly enacted Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096 (2000) (R. at 164-68), which the Court granted in May 2001 and reconsidered and confirmed in June 2001. (R. at 174-76, 178-79, respectively). In May 2002, the Board again denied entitlement, specifically noting that all Federal records had been obtained and finding that (1) the veteran's COD was not related to service, (2) although he was rated as 100% disabled at the time of his death, that rating was predicated upon non-service-connected disabilities, and (3) because none of his disabilities were service-connected, none of his surviving dependents were entitled to DEA benefits. (R. at 187-204). The parties, however, subsequently agreed in an April 2003 joint motion for vacatur and remand (JMR) that the Board's explanation for its conclusion that the notice and assistance provided on

appeal was inadequate. (R. at 207-14). In July 2003, Appellant's counsel demanded a complete copy of the records identified in the JMR and identified in the claims file. (R. at 227-28).

Also in July 2003, Appellant received a letter from the Department of the Army. (R. at 268-70). That letter essentially informed Appellant that the Army was not authorized to release any records that it may have regarding the veteran, and confirmed the veteran's active service from February to June 1954, while indicating that the nature of an additional ten months and ten days of service could no longer be ascertained. (R. at 268-70). In August that same year, Appellant's then-counsel indicated that a letter and its attachments that Appellant wished to submit for consideration indicated that the veteran's file had been destroyed. (R. at 285-86; see also R. at 267-314 (Appellant's intended submissions)). Counsel noted that Appellant was seeking benefits under two theories: service connection for COD and/or benefits flowing from the decedent's entitlement to or receipt of compensation from totally disabling service-connected disability. (R. at 285). She further opined that the evidence then of record did not "support payment of compensation under either theory." (R. at 285).

Pursuant to an October 2003 request for a hearing (R. at 338-39), the Board remanded the matter in January 2004. (R. at 354-56). That hearing took place in April 2005. (See R. at 381-422). The Board again remanded the matter in August 2005, to include the provision of an etiology opinion regarding the left-ear injury noted in the veteran's SMRs. (R. at 440-52). In that opinion, the examiner opined that it was not as likely as not that the veteran's diabetes, COPD, heart disease, cerebrovascular accident (CVA), seizure disorder, or COD were related to his service. (R. at 486-88). The RO thus issued an April 2006 SSOC continuing the denial. (R. at 477-84). On appeal to the Board again, Appellant indicated in January 2007 that she had no further evidence to submit, and that she wished to have her appeal decided as soon as possible. (R. at 511). In the Board's decision now on appeal, the Board again denied entitlement

to DIC or DEA benefits. (R. at 11-12). The Board noted that the record was bereft of any evidence linking diabetes, COPD, a heart condition, a CVA, a seizure disorder, or the COD with the veteran's service; it thus denied entitlement to DIC under 38 U.S.C. § 1310. (R. at 9-10). The Board also noted that, for ten years prior to his death, as a matter of law, Appellant was not entitled to DIC under 38 U.S.C. § 1318. (R. at 11). Finally, the Board similarly concluded that, because the COD was not service-connected, and the veteran was not totally disabled due to any service-connected disability, Appellant was barred from entitlement to DEA benefits. (R. at 12). This appeal ensued.

III. SUMMARY OF THE ARGUMENT

The Court should affirm the BVA's decision declining to reopen Appellant's claim for entitlement to DIC benefits for want of new and material evidence. The Board provided an ample statement of reasons or bases for its decision, which was not clearly erroneous. Accordingly, and because Appellant's contentions are unfounded, the Board's decision should be affirmed.

IV. ARGUMENT

A. THERE IS A PLAUSIBLE BASIS IN THE RECORD TO SUPPORT THE BOARD'S DECISION, AND IT IS NOT CLEARLY ERRONEOUS.

The Court should affirm the Board's decision. First, as to the denial of entitlement to service connection for the veteran's COD, the Board's decision is sound. When a veteran dies from a service-connected disability, the veteran's surviving spouse is eligible for DIC. 38 U.S.C. § 1310; *Darby v. Brown*, 10 Vet.App. 243, 245 (1997). A veteran's death will be considered service-connected where a service-connected disability was either the principle or contributory cause of death. 38 C.F.R. § 3.312; *see also Kane v. Principi*, 17 Vet. App. 97, 100 (2003). A service-connected disability is the principal cause of death when that disability, "singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto." 38

C.F.R. § 3.312(b) (1996); *Darby*, 10 Vet.App. at 245. In order to establish that a service-connected disability was a contributory cause of death,

it must be shown that it contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection. . . .

38 C.F.R. § 3.312(c).

A Board determination of whether a veteran's cause of death is service-connected is a finding of fact. *Darby*, 10 Vet.App. at 245; *see also Russo v. Brown*, 9 Vet. App. 46, 50 (1996), *Wray v. Brown*, 7 Vet. App. 488, 492 (1995). Findings of fact are reviewed under the "clearly erroneous" standard. 38 U.S.C. § 7261(a)(4); *see Roberson v. Principi*, 17 Vet.App. 135, 146 (2003); *Butts v. Brown*, 5 Vet. App. 532, 535-37 (1993) (en banc). ""A finding of fact is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed."" *Kowalski v. Nicholson*, 19 Vet. App. 171, 179 (2005) (quoting *Gilbert v. Derwinski*, 1 Vet. App. 49, 52 (1990) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))); *Harder v. Brown*, 5 Vet.App. 183, 189 (1993). In determining whether a finding is clearly erroneous, "this Court is not permitted to substitute its judgment for that of the BVA on issues of material fact; if there is a 'plausible' basis in the record for the factual determinations of the BVA . . . [the Court] cannot overturn them." 38 U.S.C. § 7261(a)(4); *Gilbert*, 1 Vet.App. at 53.

Here, the Board found that the veteran died in December 1997 from "cardiac arrest due to or as a consequence of a myocardial infarction and cardiomyopathy. Other significant conditions contributing to death but not resulting in the underlying cause were diabetes mellitus and chronic obstructive pulmonary disease." (R. at 3). The veteran's death certificate identified those conditions as the COD and contributing COD. (R. at 50). The Secretary also

provided Appellant with a VA opinion, and that examiner reviewed the entirety of the veteran's claims file. (See R. at 486-88). That examiner opined that it was less likely than not that any condition on Appellant's death certificate was related to his service (R. at 486-88), the Board explained quite clearly that the foregoing constituted the basis for its decision (R. at 9-10), and there is no competent evidence of record to contradict that finding. As such, there is a plausible basis in the record for the Board's decision, which is not clearly erroneous, and the Board provided an adequate statement of reasons or bases. The Court should thus affirm.

Turning to Appellant's claims for entitlement to DIC benefits under 38 U.S.C. § 1318 and to DEA benefits, the Court should affirm the denial thereof, as well. As to her entitlement to DIC, "if a veteran's death is not 'service-connected,' 38 U.S.C. § 1318 provides that a surviving spouse may still receive DIC benefits if the veteran had received, or was *entitled to receive*, compensation at the time of his or her death for a service-connected disability that had been continuously rated totally (100%) disabling for a period of 10 or more years immediately preceding death." *Rodriguez v. Peake*, 511 F.3d 1147, 1148 (Fed. Cir. 2008); *see also* 38 C.F.R. § 3.22. As to any DEA benefits, the veteran would have been required either to have died from a service-connected disability or to have been totally, permanently disabled due to a service-connected condition. 38 U.S.C. §§ 3500, 3501, 3510; 38 C.F.R. § 3.807(a). At the time of his death, the veteran had not been awarded service connection for any disability, nor was there any subsequent determination that he had been entitled to service connection, to include, as the Board adequately explained, for his COD. As such, Appellant, as a matter of law, is not entitled to the benefits that she seeks. The Court should thus affirm. *See generally Soyini v. Derwinski*, 1 Vet.App. 540, 546 (1991); *Sabonis v. Brown*, 6 Vet.App. 426, 430 (1994). "Where the facts averred by a claimant cannot conceivably result in any disposition of the appeal other than affirmance of the Board decision, the case should not be remanded for

development that could not possibly change the outcome of the decision.” *Valiso v. Principi*, 17 Vet.App. 229, 232 (2003).

B. APPELLANT'S CONTENTIONS

On appeal, Appellant appears to contend that the veteran's death was somehow related to the putative in-service left-ear injury, and that the Secretary failed to obtain records relevant to her claims. The former complaint appears to be a complaint regarding the manner in which the Board weighed the evidence. “It is the duty of the Board, not [the] Court[or Appellant], to assess the credibility and weight to be assigned to each piece of evidence in the record.” *Owens v. Brown*, 7 Vet.App. 429, 433 (1995); see also *Wood v. Derwinski*, 1 Vet.App. 190, 193 (1991). “There is a presumption that VA considered all of the evidence of record.” *Newhouse v. Nicholson*, 497 F.3d 1298, 1302 (Fed. Cir. 2007). Her dissatisfaction with the manner in which the Board assessed that evidence that it is presumed to have considered, therefore, is an insufficient basis to disturb it, and the Court should reject her apparent entreaty for it to do so. Moreover, her assertion is necessarily predicated upon her belief that that injury, assuming it to have occurred, somehow caused the veteran's death. She, however, is not competent to offer such evidence, and the Court should reject it. *Espiritu v. Derwinski*, 2 Vet.App. 492, 494-95 (1992). While a lay witness is competent to offer testimony regarding visible symptoms, “the capability of a witness to offer such evidence is different from the capability of a witness to offer evidence that requires medical knowledge such as a diagnosis as to the cause of a veteran's death.” *Espiritu*, 2 Vet.App. at 494.

Turning briefly to the latter complaint – the apparent contention that the Secretary failed to obtain records – that is belied by the record on appeal. It is clear from the record that the veteran's claims file was destroyed by fire in 1973. The genesis of this concern appears to be the veteran's active duty for training in 1958 (R. at 38), and Appellant's apparent misunderstanding about the difference between that type of service and active duty proper. In any event, Appellant was

told repeatedly that the file had been destroyed and that she had received all of the evidence relating to the veteran's service. In fact, when represented in August 2003, her attorney informed her that it appeared that the record had been destroyed and that no apparent records were missing (although she wished to confirm that latter point). (R. at 285-86; see also R. at 287-314 (Appellant's intended submissions)). This concern, therefore, is without merit. As to Appellant's remaining assertions, which appear to be more in the form of prayers for relief than allegations of error, while the Secretary does not concede on any points, because there is no error in the Board's decision, they need not specifically be addressed, and the Secretary respectfully request that the Court reject them.

V. CONCLUSION

For the foregoing reasons, the Secretary respectfully asks the Court to affirm the Board's July 23, 2007, decision. The Board's decision contained a plausible basis upon which to draw that conclusion, which was expressed in clear terms, constituting an adequate statement of reasons or bases that were not clearly erroneous. Moreover, Appellant's contentions garner no traction. The Court should therefore affirm.

Respectfully submitted,

JOHN H. THOMPSON
Acting General Counsel

R. RANDALL CAMPBELL
Assistant General Counsel

/s/ David L. Quinn
DAVID L. QUINN
Deputy Assistant General Counsel

/s/ Richard A. Daley

RICHARD A. DALEY

Senior Appellate Attorney
Office of the General Counsel (027G)
U.S. Dept. of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 639-4851/4800

Attorneys for Appellee,
Secretary of Veterans Affairs

CERTIFICATE OF SERVICE

I certify under possible penalty of perjury under the laws of the United States of America, that on this December 11, 2008, a copy of the foregoing was mailed, postage prepaid, to:

Cathy L. Toole
250 Bohn St.
Biloxi MS 39530

/s/ Richard A. Daley

RICHARD A. Daley

Senior Appellate Attorney

07-2675

Jan 22, 2008

(Dear the United States Court of
Appeals for Veterans Claims)
To the General Counsel
Attention Richard A. Daley
Freedom of Information Act

1. Proof of service connected that has been acknowledged by the Army, but has not been acknowledged by the VA yet. Read document dated Oct 8, 1954. Proof of right ear injury. The ear injury that caused the most damage. Read document dated Sept 21, 1954. Proof of left ear injury.

End of Exhibit

2. Proof of service connected that has been acknowledged by the Veterans Administration, but has not never been acknowledged in any of my decisions yet. Read document dated April 11, 1978. Since James Luther Toole was sixty percent non service connected before I married him. How many percent was he service connected in 1985 after I married him?

07-2675

Read the document dated Feb 21, 1997.
Read number eight. What does G & W
stand for? Gun & Shot Wound. Read
another document dated Feb 21, 1997.
Read number two. Supple. What does
supple come from?

End of Exhibit

3. Other health conditions. Eyes,
Epilepsy, Diabetes, Bronchitis, Otorrhea
and Middle Ear Disease, Lumbar
the Spine, Ascending Colon Diverticular
Disease.

End of Exhibit

4. What all different branches of the
National Archives and Records
Administration's records located
on my husband at?

(1) East Point, Ga is now Ellen Wood,
Ga, 404-736-2900

(2) Lee's Summit, Mo 816-268-8150

(3) College Park, Maryland 301-837-1600

How can records be in the physical
custody of the National Archives
and Records Administration and
will remain in the legal custody
of the VA, If they are not honestly

07-2675

there? How could all of my husbands military personnel records have honestly been destroyed in the fire in 1973 at the National Personnel Records Center? Since there are records located in College Park, Maryland, Lee's Summit, Mo, and Ellen Wood, Ga.
End of Exhibit

5. How long was James Luther Toole honestly in the U.S. Military?
Read the document dated June 15, 1954. Total years Govt. service. 4/12. This is a total of four years and twelve days. What year did my husband have to join the U.S. Military in the first time? In order to be in the U.S. Military for four years and twelve days by June 15, 1954? 1950.
Read the 282 Q M Co (Parts) Aug 3, 1958. The document Ret April 1, 1959. What does Ret stand for? Retired. A copy of the Retirement Certificate dated April 1, 1959.

End of Exhibit

07-2675

6. The DD Form 217 A.
End of Exhibit
7. The Staff Duty Officer Report
End of Exhibit
8. The Court Marshal Records
End of Exhibit
9. A copy of the test and the test results of each test. When Dr Faget reported my husband totally disabled Jan 3, 1976.
End of Exhibit
10. List of all medicines ordered by doctor dated April 6, 1993 for James Luther Toole. What was his c/o payments then till his death?
End of Exhibit
11. An entire copy of the G & A Form 6954's and NA Form 13038's. While my husband was in the U.S. Military.
End of Exhibit
12. A copy of the DD 214 with the enlistment in 1950-1952 on it.
End of Exhibit
13. An entire copy of every check

07-2675

14. I want my husband's cause of death rediagnosed. That there was so many things wrong with my husband, and Biloxi Regional Medical Center did not do an Autopsy on my husband nor did Biloxi Regional Medical Center send my husband's body to the Veterans Administration Medical Center in Biloxi, Ms for an Autopsy to be done. Will it take the 38 C.F.R. 13.312 code to prove my husband's cause of death?

End of Exhibit

15. Letter from Doctor proving what the U.S. Government has put me through. What? Stress, Extra Seizures, and Mental Anguish.

End of Exhibit

16. Who issued the M-1 Grands to the soldiers in 1954? The U.S. Government.

End of Exhibit

I Cathy Toole am requesting an entire copy of the missing records that I have never received before. Under the fourteenth Amendment

07-2675

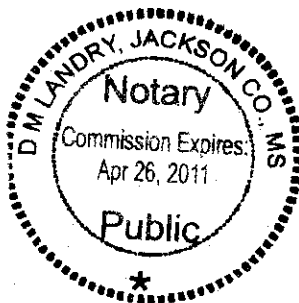
of the United States Constitution.
Either produce and release me
Cathy Toole an entire copy of the
missing records and also make
me three honest decisions under
the fourteenth Admendment of the
United States Constitution. Or set
me a Federal Court Date in front
of Lady Justice. So that Lady
Justice can execute me and my
two daughters Justice.

God has given me enough of
knowledge to come as far as I
already have. And God sure is
not going to forsake me now.

VA Claim 18461486

Cathy Toole

01-28-2008
DM Landry
Notary





DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2008

RE: 2008-10-037

Ms. Cathy Toole
250 Bohn Street
Biloxi, MS 39530

Dear Ms. Toole:

Your Freedom of Information Act and Privacy Act (FOIA/PA) request dated September 22, 2008, was received by this office on October 17, 2008.

Your letter indicates a misunderstanding of the FOIA. The FOIA requires Federal agencies to search for and determine the releasability of specific records, which are held by that agency. The FOIA does not require agencies to answer questions or interrogatories, analyze and/or interpret documents for a requester; to create records or to use the FOIA as an "enforcement mechanism" to compel agencies to perform their missions.

Your request is being returned to you and we regret that we are unable to further assist you.

Sincerely,

Hugh Gilmore
Director, Disclosure Services

Sept 22, 2008 1

Dear the Department of the Treasury
Attention Henry Paulson

Freedom of Information Act

Yes I am Lathy Toole the legal wife
of James Luther Toole (the deceased
veteran). I Lathy Toole am sending
you Henry Paulson a copy of my
Declaration of Net Worth from
the United States Court of Appeals
for Veterans Claims. Think about
all this Henry Paulson! At
the time this civil action was
filed, my personal net worth
did not exceed 2,000,000 (two
million dollars); nor did I
own any unincorporated business,
partnership, corporation, association,
unit of local government or
organization, Attention! The net
worth of which exceeded 7,000,000
(seven million dollars) and
which had more than 500 employees.
Where is my 7,000,000 (seven
million dollars)? What place
of business has more than
500 employees, has my 7,000,000

seven million dollars)? I
Cathy Toole am sending you
Henry Paulson a document. This
document is Power of Attorney
By Individual For The Collection
Of A Specified Check Drawn on
The United States Treasury.

Is my 7,000,000 (seven million
dollars) located in the Department
of the Treasury? I Cathy Toole
am sending you Henry Paulson
another U S Government document.
This letter is from the United
States Court of Appeals for Veterans
Claims. Notice To File Brief.

That letter is dated July 18, 2008.

I Cathy Toole am sending you
Henry Paulson a copy of my
decision from Federal Court. My
case was filed Dec 6, 2006. Think
about this! Why am I v. Bear
Stearns & Co. Either disburse the
7,000,000 (seven million dollars)
plus the interest that it has
collected since Dec 6, 2006.

Or I am ready to enter the Federal

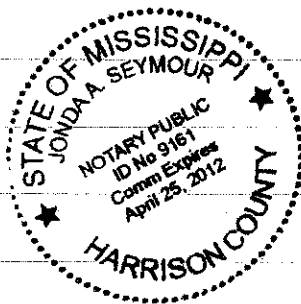
Court Room with a lot of individuals that work for the U.S. Government subpoenaed to court in front of Lady Justice. Why? Because she is standing ready to execute justice. And also in front of a honest judge. Think about this Henry Paulson? Since the U.S. Government can bond the Federal Reserves Banks out of financial trouble. Why can't the U.S. Government (The Department Of The Treasury) pay me Cathy Toole the 7,000,000 (Seven million dollars), that I have already been awarded since Dec 6, 2006? Plus the interest. I Cathy Toole expect to be given the full amount that I was awarded Dec 6, 2006 plus the interest as soon as possible. With out any delay. Think about this Henry Paulson? I Cathy Toole am ready to enter the Federal Court Room. To find out what bank or Federal Reserves Bank or the U.S. Government

4

has been swindling me out of my money. Who is the swindler?
[Cathy Toole am also requesting any and all other money's to be disbursed to me Cathy Toole].
God has given me enough of knowledge to come as far as I already have. And God sure is not going to forsake me now.

Please call me 228-273-1312.
Cathy Toole

SIGNED BEFORE ME ON this 22ND,
DAY OF SEPTEMBER, 2008.



Jonda A. Seymour
NOTARY PUBLIC

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CATHY TOOLE

§

PLAINTIFF

§

v.

§

Civil Action No. 1:06CV716LG-JMR

§

ALLEN WEINSTEIN, ET AL.

§

DEFENDANTS

**ORDER DISMISSING PLAINTIFF'S COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION**

This cause comes before the Court *sua sponte*, after review of the pleadings on file in the above captioned cause. Specifically, the Court has reviewed the Plaintiff's response to the Court's show cause order and finds that the above captioned cause should be dismissed pursuant to FED. R. Civ. P. 12(b)(1).

District courts have jurisdiction of all civil actions "arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. However, the grounds for this Court's jurisdiction are not unlimited, a complaint must seek a *remedy* expressly granted by a federal law or it must require the construction of a federal statute or the application of federal legal principles for its disposition. *Frank v. Bear Stearns & Co.*, 128 F.3d 919, 922 (5th Cir. 1997). If this "court lacks the statutory or constitutional power to adjudicate the case," *The John Corp. v. City of Houston*, 214 F.3d 573, 576 (5th Cir. 2000) (citations omitted), the case should be dismissed for lack of jurisdiction.

The pleadings establish that the Plaintiff, Cathy Toole, is the widow of veteran James Luther Toole. Construed liberally, the gravamen of Plaintiff's complaint is that she has wrongfully been denied benefits by the United States Veteran's Administration. The complaint does not attack the constitutionality of an Act of Congress, rather it asserts that Plaintiff is rightfully entitled to certain veterans' benefits. 38 U. S.C. § 511(a) regulates the Authorities and Duties of the Secretary concerning Veterans' Benefits. It provides in part:

(a) The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

38 U.S.C.A. § 511.

In *Zuspann v. Brown*, 60 F.3d 1156 (5th Cir. 1995), the Fifth Circuit held that under 38 U.S.C. §§ 511 and 7251, [Veterans' Judicial Review Act], the district courts have no jurisdiction to review a denial of benefits. In support of its decision, the Court reasoned that:

In 1988, Congress passed the Veterans' Judicial Review Act ("VJRA"), which clearly announced the intent of Congress to preclude review of benefits determinations in federal district courts. The VJRA also created an exclusive review procedure by which veterans may resolve their disagreements with the Department of Veterans Affairs. The VJRA allows veterans to appeal benefits determinations to the Board of Veterans' Appeals. Jurisdiction to review the Board's decisions is conferred exclusively on the Court of Veterans Appeals. The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction to review the decisions of the Court of Veterans Appeals. Congress expressly gave the Federal Circuit Court of Appeals "exclusive jurisdiction" to "interpret constitutional and statutory provisions, to the extent presented and necessary to a decision".

Zuspann, 60 F.3d at 1158 -59.

It is the opinion of the Court that Plaintiff is unable to demonstrate the requisite subject matter jurisdiction necessary for this Court to consider her claims. Accordingly,

IT IS ORDERED AND ADJUDGED that Plaintiff's complaint should be and is hereby **DISMISSED** for lack of subject matter jurisdiction pursuant to FED. R. CIV. P. 12(b)(1).

SO ORDERED AND ADJUDGED this the 6th day of December, 2006.

/s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

NOTICE TO FILE BRIEF

DATE: 7/18/08

DOCKET NO: 07-2675
CATHY L. TOOLE, APPELLANT,

v.

JAMES B. PEAKE, M.D.,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

TO THE APPELLANT:

VA counsel has sent the Record on Appeal to you and to the Court.

Your brief is due **within 60 days** after the date of this notice. If you are unrepresented, you may use the informal brief form attached to this notice.

NORMAN Y. HERRING
Clerk of the Court

By: Robyn Willis *RW*
Deputy Clerk

☒ Attachment (only to unrepresented appellant)

Copies to:

Cathy L. Toole

VA General Counsel (027)

See attached Letter

6. Are there any **other reasons** why you think the BVA decision is wrong? _____ If so, what are those reasons?

See attached Letter

7. What **action** do you want this Court to take?

See attached Letter!

8. Did you attach any extra pages to this brief? *yes* If so, how many pages? *21* ^{1 copy} *Government* *11* *Letter*

Date: *Aug 19, 2008* Appellant's signature: *Cathy Toole* ²³ *Total*

Address: *250 Bohn st*
Biloxi, Ms 39530

Phone No.: *228-273-1312*

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on *Aug 19, 2008* a copy of this Informal Brief was mailed, postage prepaid, to:
(Date)



General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Cathy Toole
Appellant's signature

Form 9
(Rev. 12/07)

SIGNED Before me on this *19th* DAY OF *Aug.* 200*8*
Jonda A. Seymour

_____, APPELLANT

v.

Case No. 07-2675

JAMES PEAKE, M.D.
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

NOTE: Carefully follow the instructions attached to this form

1. If you have had another case in this Court, what is the case number?

See Attached Letter

2. If there is more than one **issue** on the front page of the BVA decision, which one(s) are you appealing?

See Attached Letter

3. Did the BVA incorrectly decide or fail to take into account any **facts**? _____ If so, what are those facts? How should the BVA have decided them?

See Attached Letter

4. Did the VA or BVA fail to get any **documents** that you or your representative told them about? _____ If so, what page(s) of the record shows that these documents exist? How do these documents relate to your claim?

See Attached Letter

(SEE NEXT PAGE)

APPENDIX 10-C 13461486

10-27

Standard Form 292
Rev. February 1973
Supersedes April, 1963
Treasury Dept. Circ. No. 21
232-102

(Note.—The grantor's given name, additional initials, if any, and surname should be used in the execution of the power of attorney.)

POWER OF ATTORNEY BY INDIVIDUAL FOR THE COLLECTION OF A SPECIFIED
CHECK DRAWN ON THE UNITED STATES TREASURY

Know all Men by these Presents:

That the undersigned,

(Post-office address)

, does hereby appoint

, of

(Post-office address)

as attorney to receive, endorse, and collect check No.

, dated

19

for

dollars

drawn on the United States Treasury, by

Symbol No. in favor of

give full discharge for same; hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

Witness the signature and seal of the undersigned, this

Jan 9

day of

2008

Cathy Toole

(Signature)

X Cathy Toole

(SEAL)

250 Bohn St

(Address)

Two witnesses.

Oscar R. H. H. H.

(Signature)

19399 North Shaw Rd

(Address)

*Personally appeared before me the above-named known or proved to me to be the same person who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed; and I hereby certify that the said power of attorney was read and fully explained to the said grantor at the time of acknowledgment.

Witness my signature, official designation, and seal.

Cathy Toole

(Signature of attesting officer)

[IMPRESS SEAL HERE]

Dated at

day of

19

(Official designation)

My commission expires

19

IMPORTANT.—Do not execute this instrument without first reading the instructions on the reverse side hereof. Exact compliance with these instructions will avoid complications.

UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Cathy Toole, Appellant,

vs.

R. JAMES NICHOLSON,
Secretary of Veterans Affairs, Appellee.

)
)
)
) U.S.C.A.V.C. # 07-2675
)
)

DECLARATION OF NET WORTH

Appellant, Cathy Toole, hereby declares and states:

1. I am the appellant named in this appeal. This declaration is based upon my personal knowledge.
2. At the time this civil action was filed, my personal net worth did not exceed \$2,000,000 (two million dollars); nor did I own any unincorporated business, partnership, corporation, association, unit of local government, or organization, the net worth of which exceeded \$7,000,000 (seven million dollars) and which had more than 500 employees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

X Cathy Toole
Veteran

Jan 09, 2008
Date

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 07-2675

CATHY L. TOOLE,

APPELLANT,

v.

JAMES B. PEAKE, M.D.,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before IVERS, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On November 10, 2008, the appellant filed a motion for expedited proceedings. In her motion, the appellant asserts that she would like the Court to take her condition into consideration. With her motion, she submitted a physician's statement that asserts that the appellant has a seizure disorder which could be fatal. However, as required by Rule 47(a)(1), the appellant has failed to provide a physician's statement "including identification of the physician's licensing authority and current license number." U.S. VET. APP. R. 47(a)(1). Therefore, the Court will deny the appellant's motion without prejudice. The appellant may renew her motion if she is able to provide a physician's statement that complies with Rule 47(a)(1).

Upon consideration of the foregoing, it is

ORDERED that the appellant's motion for expedited consideration is denied without prejudice. The appellant may renew this motion if she is able to provide a physician's statement that includes the physician's licensing authority and his current license number. *See* Rule 47(a).

DATED: December 11, 2008

BY THE COURT:

/s/ Donald L. Ivers
DONALD L. IVERS
Judge

Copies to:

Cathy L. Toole

VA General Counsel (027)

brw